Rep. Lofgren Issues Statement on Updated Visa Bulletin

Washington, D.C. – Representative Zoe Lofgren (D-San Jose) today issued the following statement in response to the State Department's update of the July Visa Bulletin and the subsequent rejection of applications for adjustment of status by the U.S. Citizenship and Immigration Services (USCIS).

I'm deeply concerned by today's updating of the July Visa Bulletin by the Departments of State and Homeland Security. By taking this unprecedented mid-month update, the Departments of State and Homeland Security have seriously undermined the stability and predictability of U.S. immigration law. Thousands of individuals and businesses rely on the monthly bulletins to prepare and plan for the submission of applications. In addition, thousands of dollars in legal fees and other application related expenses are incurred in preparation for filing applications based on the these monthly bulletins.

This update sets a terrible precedent, and undermines our nation's efforts to foster legal and orderly immigration.

Rep. Lofgren recently sent Secretaries Rice and Chertoff letters asking them to reconsider any mid-month updates of the July Visa Bulletin.

The complete text of both letters is below:

Congresswoman Zoe Lofgren is serving her seventh term in Congress representing most of the City of San Jose and Santa Clara County. She serves as Chair of the House Judiciary Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law. She also Chairs the House Administration Subcommittee on Elections and serves on the House Homeland Security Committee. Congresswoman Lofgren is Chair of the California Democratic Congressional Delegation consisting of 34 Democratic members of the U.S. House of Representatives from California.

The Honorable Michael Chertoff
Secretary

U.S. Department of Homeland Security
Washington, DC 20528

Dear Secretary Chertoff:

I am writing with regard to a time sensitive matter. It has been brought to my attention that you are considering the rejection of adjustment of status applications for several employment-based immigration preference categories, despite the fact that the published July Visa Bulletin shows that visas for these categories are available. I am concerned that

such action may violate the law and could threaten the integrity of our immigration system. In addition, such an act may cause the Department of Homeland Security to incur substantial litigation costs.

As you know, pursuant to your own regulations, "[i]f the applicant [for adjustment of status] is a preference alien, the current Department of State Bureau of Consular Affairs Visa Bulletin will be consulted to determine whether an immigrant visa is immediately available." 8 CFR 245.1(g). Thus, when the Visa Bulletin shows that visas for most preference categories are available for applicants with priority dates on or before the listed priority date, your Department must accept those adjustment of status applications for adjudication.

I understand that you are considering the return of applications for adjustment of status as early as today despite the fact that the published July Visa Bulletin would allow for their acceptance. As you may know, thousands of businesses have acted in reliance upon the July Visa Bulletin and 8 CFR 245.1(g), just as they have done in previous months for several years now. I have been told that many U.S. businesses have taken the necessary steps to prepare and file applications for adjustment of status, including thousands of dollars of expenses to engage counsel, flights for employees to quickly obtain necessary documents and medical exams for the applications, cancellation of business and holiday travel, changes in family plans to ensure families are in the proper location, etc. Moreover, some have already submitted such applications for receipt today, July 2, 2007, in reliance upon the law and precedent. Changing course now could result in the loss of thousands of dollars already expended by businesses and individuals, and more importantly, threaten the integrity and predictability of our immigration system.

Moreover, I am very concerned that you may choose to reject adjustment of status applications while the Visa Bulletin shows that immigrant visas are available. Such an action may spawn litigation that I understand many are considering and preparing to undertake.

As you know, I have raised concern over the recent decision to raise immigration application fees by, on average, over 80%. One of the justifications provided for such a large increase was litigation costs.

While some costs of litigation are certainly justified in defense of the Government, I would have serious concern over litigation to defend the Department of Homeland Security from a decision to reject applications of adjustment of status in light of the existing regulations and the July Visa Bulletin showing most employment-based visas as available.

Before you take any action to reject adjustment of status applications, I would greatly appreciate a timely response to this letter and a meeting to discuss the matter. In your response, I would like an explanation of the reasons you are considering for taking action contrary to 8 CFR 245.1(g), years of precedent, and the potential for litigation which could cost the Department a substantial amount it cannot spare for litigation at this time.

Thank you for your timely consideration of this very important matter.

Sincerely,

Zoe Lofgren
Chairwoman

Subcommittee on Immigration, Citizenship, Refugees, Border Security, & International Law

The Honorable Condoleezza Rice
Secretary

U.S. Department of State

2201 C Street, NW
Washington, DC 20451

Dear Secretary Rice:

I am writing with regard to a time sensitive matter. It has been brought to my attention that the Department of State may revise its July Visa Bulletin published on June 13, 2007, to reflect a retrogression or unavailability of immigrant visas in several employment-based immigration categories. I am concerned about the effect such unprecedented action will have on the predictability and reliability of our legal immigration system and on those who rely upon it.

As you know, pursuant to your authority to control the numerical limitations of visas as described in 22 CFR 42.51, each month your Department issues a Visa Bulletin that is consulted by hundreds of thousands of U.S. businesses seeking immigrant visas to determine whether an immigrant visa is immediately available for their employees.

On June 13, your Department announced in its Visa Bulletin for July 2007 that all employment-based categories (except for the “Other Workers” category) for immigrant visas will be “current,” meaning that U.S. businesses going through the lengthy and backlogged immigrant visa or "green card" process can, throughout July, file adjustment of status applications. Your regulations at 22 CFR 42.51 allow them to rely on and use such information. Historically, they have relied on such information knowing that when they prepare and file such applications, they will be accepted and adjudicated.

I have been told, however, that your Department is seriously considering a revision of the July Bulletin as early as today or tomorrow that would retrogress the visas available in various employment categories. This unprecedented action would result in the termination of thousands of applications by U.S. businesses who have prepared and are ready to file applications on behalf of their employees pursuant to the June 13th publication of your Department’s July Visa Bulletin.

It is my understanding that such a revision, coming in the same month in which the bulletin is issued, would be contrary to years of practice in which revisions or adjustments to the availability of immigrant visa numbers are made in the following month of before the beginning of the month, not in the same month individuals and businesses have begun preparing and submitting applications for adjustment of status. I am concerned that the extraordinary action of revising a bulletin mid-month may be taken without serious consideration of the effect on precedence, stability in immigration law, and predictability for those who rely upon the Visa Bulletin.

Furthermore, it is my understanding that thousands of businesses have acted in reliance upon the July Visa Bulletin, just as they have done with previous Bulletins. I have been told that, based upon the July Visa Bulletin, many businesses have taken the necessary steps to prepare for the submission of applications for adjustment of status, including thousands of dollars of legal expenses, flights for employees to quickly obtain necessary documents and medical exams for the applications, cancellation of business and holiday travel, changes in family plans to ensure families are in the proper location, etc.

Before any decision is made to revise the July Visa Bulletin, I would greatly appreciate a timely response to this letter and a meeting to discuss the matter. In your response, I would like an explanation of the reason you chose to issue a visa bulletin listing most employment-based immigrant visas as current, when just a few weeks later—after thousands of employers and employees have acted in reliance upon the bulletin, but before applications could be submitted based upon the bulletin—you are now considering a change of course. I would also appreciate an explanation of whether and in what ways you have considered the serious ramifications of such action upon the integrity, stability, and predictability of our immigration law.

Thank you for your timely consideration of this very important matter.

Sincerely,

Zoe Lofgren
Chairwoman

Subcommittee on Immigration, Citizenship, Refugees, Border Security, & International Law